

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into the Service
Quality Standards for All Telecommunications
Carriers and Revisions to General Order 133-B.

Rulemaking 98-06-029
(Filed June 18, 1998)

O P I N I O N**1. Summary**

This decision awards California Small Business Association and California Small Business Roundtable, \$8,844.47 and Sun Yung Kim \$19,621 in compensation for their respective substantial contributions to Decision (D.) 00-03-052.

2. Background

On March 16, 2000, the Commission issued D.00-03-052 which retained General Order (GO) 133-B in its present form, with the exception of Rules 3.4 and 3.5, which were deleted.

Pub. Util. Code § 1801 et seq. provide for compensation of attorney and expert witness fees and costs of eligible participants who have made substantial contributions to a Commission order or decision. Parties who have indicated an intent to seek compensation (Pub. Util. Code § 1804(a)(1)), and who have demonstrated that absent compensation their participation would impose a financial hardship, may file a request for such compensation, along with justification for the amount claimed. (Pub. Util. Code § 1804(c).)

3. Request of California Small Business Association and California Small Business Roundtable

California Small Business Association and California Small Business Roundtable (collectively, Small Business) filed a notice of intent to claim intervenor compensation. On December 23, 1998, the Assigned Commissioner issued a ruling that found Small Business eligible for an award of compensation. Small Business timely filed for compensation on May 15, 2000.

3.1 Substantial Contribution

Small Business argues that it made a substantial contribution by advocating that:

- “1. Minimum telephone quality standards are important for consumers,
- “2. Such standards should continue to apply to ILECs and CLCs, and
- “3. Any new standards should be based on objective information which was lacking on the rulemaking record.” (Request, p. 14.)

The issue we address is whether the advocacy of Small Business on any of these points made a substantial contribution to D.00-03-052.

Both before and after issuance of D.00-03-052, GO 133-B applied to all telephone utilities providing service within California. The only change we adopted in D.00-03-052 was the deletion of Rules 3.4 (Dial Tone Speed) and 3.5 (Dial Service) from GO 133-B. However, we also addressed whether the service quality standards contained in GO 133-B should be imposed on non-dominant carriers (e.g., Reply Comments of California Association of Competitive Communications Companies, p. 2) or on carriers that provide competitive services. (Reply of Sprint PCS, p. 1.) In D.00-03-052, we agreed with the first two positions taken by Small Business concerning the importance of

minimum telephone quality standards and the application of such standards to all telephone companies. Thus we find that Small Business made a substantial contribution on these two issues.

The Commission did not adopt Small Business' third position, and therefore no basis exists for making a finding that Small Business' third position made a substantial contribution to D.00-03-052.

3.2 Productivity

It is difficult to establish a cost-benefit ratio for the participation of Small Business that would satisfy a cost accountant. However, Small Business has submitted a figure for payment of its counsel and a separate figure for expenses such as postage and copying, and we may compare this figure to the expenses a customer would incur if the customer had to prove that the quality of service would be unreasonable, assuming GO 133-B did not exist. In all probability, attorney and expert witness fees would exceed the amount claimed by Small Business. We therefore find that the efforts expended by Small Business in this proceeding were productive to consumers.

3.3 Time and Expenses

Small Business submits a request for the services of its attorney, Carl Oshiro (Oshiro). It sets forth itemized hours expended for each of Oshiro's activities related to this proceeding, which total 32.5 hours, and asks for compensation of \$265 per hour. It also sets forth 7.3 hours related to preparation of its claim for compensation, which it bills at \$132.50 per hour.

Attachment A to Small Business' request for compensation lists the hours spent, however, it does not break down the activities into issues. Since only two of the issues advocated by Small Business were of substantial benefit to our decision, there is no precise means of determining the hours spent on the

first two, for which compensation is allowed, and how much time on the third issue, for which no compensation is allowed. Therefore, as a reasonable proxy, we shall allow two-thirds of the claimed compensation for attorney fees.

Small Business asks for attorney fees of \$265 per hour for Oshiro. Attached to its request is a survey of Altman and Weil pertaining to attorney fees in California. Small Business also directs our attention to fees allowed various counsel in prior Commission decisions. Oshiro has many years of practice before this Commission, and the submitted data support the requested rate. Therefore, we will authorize a rate of \$265 per hour for his attorney fees and (consistent with our long-standing practice) half that rate for preparing the compensation request.

Small Business is entitled to reimbursement of 26.5 hours of attorney fees (2/3 of the 39.8 hours claimed) at \$265 per hour, totaling \$7,024.30. It is also entitled to 7.3 hours of attorney fees at \$132.50 per hour, totaling \$967.25, for hours spent preparing the compensation request.

Small Business claims \$492.97 for copying expenses and \$359.95 for postage expenses. These expenses are reasonable and should be allowed.

4. Request of Sun Yung Kim

Sun Yung Kim (Kim) filed a notice of intent. On December 23, 1998, the Assigned Commissioner issued a ruling determining that Kim was eligible for an award of compensation. Kim timely filed a request for compensation on May 11, 2000.

4.1 Substantial Contribution

Kim requests \$26,067 in compensation for her substantial contribution to D.00-03-052. Kim asserts that her advocacy provided productive, unique, and needed participation. Kim contends she tried to improve or better quality

service for Californians, and to that end she submitted comments and recommendations in order to change the Service Quality Standards (SQS) for customers. Kim proposed annual review and revision of standards once a year until these standards are met and satisfactory service to customers has been provided.

Kim compared SQS with other states' standards. She recommended that Commission expand its monitoring and enforcement and adopt a penalty schedule to deter any violation of such regulations similar to the Michigan Public Service Commission. Kim also proposed adoption of Virginia's Service Performance Guarantee and its incorporation into GO 133-B. Kim believed that such revisions would guarantee better service, lower price, service in a timely fashion, and a simpler method for customers to move from one carrier to another carrier.

Finally, Kim proposed that any telecommunications provider who wants to compete in California should serve all sectors, and that GO 133-B should apply to both dominant and non-dominant telecommunications carriers.

Kim's participation assisted the Commission in analyzing the issues presented. We agree with Kim that her participation was productive and unique in that it focused on the customer perspective and emphasized the importance of maintaining GO 133-B. Kim's participation made a substantial contribution to this proceeding. However, the Commission ultimately made very few changes to GO 133-B. Given the breadth of Kim's proposals, which was reasonable in light of the scope of the rulemaking, we will reduce the number of hours for which she seeks compensation only by 10%.

4.2 Productivity

The cost to a single consumer of proving that a carrier provided substandard service would most likely exceed the amount of money that Kim has requested for her participation in this proceeding. We therefore find that Kim's efforts were productive for customers.

4.3 Reasonableness of Time and Expenses

Kim requested compensation for 205 hours of advocacy, including 19 hours spent on preparing the compensation request.

In recognition of the additional experience she has gained since her last compensation award, Kim also requests an increase in her hourly compensation rate from \$100 per hour to \$110 per hour. We agree that the requested hourly increase is reasonable given Kim's increased experience. We therefore award Kim \$18,414 (186 hours x \$110/hour x 90%) for her advocacy work.

Kim's request for 19 hours compensation for preparing her four-page intervenor compensation request (plus attachment pages) is excessive. We will reduce the amount of hours eligible for compensation down to 10 hours. Also, time spent preparing such requests is compensated at half the hourly professional rate. Therefore, Kim should be awarded \$550 (10 hours x \$55/hour) for preparation of her compensation request.

In addition, Kim incurred \$3,517 in other costs (transportation, copies, postage) which she has itemized. However, included in this amount is a charge for \$2,860 for time spent (52 hours billed @ ½ hourly rate) conducting administrative activities. Such charges for administrative time are compensated by overhead provided for in professional hourly rates. Also, Kim's claim for other costs includes compensation for inefficiencies. For instance, Kim seeks compensation for two hours driving time plus mileage and tolls for filing a

document at the Commission. Such activity could be accomplished by mailing pleadings to the docket office. We therefore disallow the \$2,860 claimed for administrative tasks. In total, Kim should be compensated \$19,621 for her substantial contribution to this proceeding.

5. Award

In D.00-01-020, we addressed the issue of the payment of intervenor compensation awards in quasi-legislative proceedings affecting an industry or multiple industries. We stated our intent that no later than July 1, 2001, awards in quasi-legislative rulemaking proceedings where no specific respondents are named will be paid from an intervenor compensation program fund. The details of this funding method are set forth in D.00-01-020. The proceeding is quasi-legislative in nature and affects an entire industry. There is no named respondent. Accordingly, the awards to Small Business and Kim will be paid from the intervenor compensation program fund. We award Small Business \$8,844.47 and Kim \$19,621, calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing July 25, 2000 (the 75th day after Kim submitted a complete compensation request), and July 29, 2000 (the 75th day after Small Business submitted a complete compensation request), and continuing until the utilities make full payment, respectively, of the award.

As in all intervenor compensation decisions, we put Small Business and Kim on notice that Commission staff may audit its records related to this award. Thus, Small Business and Kim must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records of Small Business and Kim should identify specific issues for which compensation is requested, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7 (f)(6) of the Commission's Rules of Practice and Procedure, the 30-day comment period for draft decisions is waived because this is a decision on requests for compensation.

Findings of Fact

1. Small Business has made a timely request for compensation for its contribution to D.00-03-052.
2. Kim has made a timely request for compensation for its contribution to D.00-03-052.
3. Small Business contributed substantially to D.00-03-052.
4. Kim contributed substantially to D.00-03-052.
5. As modified, Small Business' requested hourly rate for its attorney is no greater than the market rates for individuals with comparable training and experience.
6. \$265 per hour is a reasonable compensation rate for Oshiro's professional services considering his experience, effectiveness, and rates paid other attorneys.
7. \$110 per hour is a reasonable compensation rate for Kim's professional services considering her experience, effectiveness, and rates paid other intervenors.
8. The miscellaneous costs incurred by Small Business are reasonable.
9. Except for hours billed for administrative tasks, the miscellaneous costs incurred by Kim are reasonable.

Conclusions of Law

1. Small Business has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
2. Kim has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

3. Small Business should be awarded \$8,844.47 for its contribution to D.00-03-052.

4. Kim should be awarded \$19,621 for her contribution to D.00-03-052.

5. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

6. This order should be effective today so that Small Business and Kim may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. California Small Business Association and California Small Business Roundtable (Small Business) is awarded \$8,844.47 in compensation for its substantial contribution to Decision (D.) 00-03-052.

2. Sun Yung Kim (Kim) is awarded \$19,621 in compensation for her substantial contribution to D.00-03-052.

3. The award shall be paid from the intervenor compensation program fund, as described in D.00-01-020.

4. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning on July 25, 2000 for Kim and on July 29, 2000 for Small Business and continuing until full payment is made.

5. The comment period for today's decision is waived.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.